FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 390

IN THE MATTER OF THE ESTATE OF
NELLIE M. CRAMER, DECEASED

THE DIVISION OF NATIONAL MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH and THE DIVISION OF WORLD MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH, Petitioners,

vs.

OTTO J. KOERNER, ADMINISTRATOR DE BONIS NON CUM TESTAMENTO ANNEXO OF THE ESTATE OF NELLIE M. CRAMER, DECEASED, Respondent.

and

No.

IN THE MATTER OF THE ESTATE OF
FRED S. CRAMER, DECEASED

THE DIVISION OF NATIONAL MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH and THE DIVISION OF WORLD MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH, Petitioners,

vs.

OTTO J. KOERNER, ADMINISTRATOR CUM TESTAMENTO ANNEXO OF THE ESTATE OF FRED S. CRAMER, DECEASED, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

Petitioners pray that a Writ of Certiorari issue to review the judgment herein of The Supreme Court of The State of Kansas, the highest judicial court sitting within and for the State of Kansas. The argument and authorities presented herein are applicable to both of the above entitled companion cases.

OPINIONS BELOW

The judgment and opinion of The Supreme Court of The State of Kansas is printed in the Appendix hereto (App. 7a). These cases are reported at 183 Kans. 808; 332 Pac. 2d 551, and, 183 Kans. 816; 332 Pac. 2d 560 respectively. Pertinent portions of the opinion of the State District Court from which the cases were appealed to the State Supreme Court are printed in the Appendix as part of the opinions of The Supreme Court of The State of Kansas; with respect to the Nellie M. Cramer case (App. 10a) and with respect to the Fred S. Cramer case (App. 20a).

JURISDICTION

The final judgment and opinion of The Supreme Court of The State of Kansas in both cases was entered December 6, 1958. An Order extending the time within which to file a Petition for a Writ of Certiorari was entered by this Court March 3d, 1959. The jurisdiction of this Court is invoked under 28 USC Sec. 2101 (c).

QUESTION PRESENTED

The cases concern the full faith and credit which The State of Kansas is required to give to the laws of The State of New York (App. 1a & 4a) changing Petitioners' corporate names, which former corporate names were sought to be used by the testators in their Wills naming Petitioners as beneficiaries.

ARTICLE OF CONSTITUTION IN QUESTION

The issue arises under Article IV of The Constitution of The United States requiring that "full faith and credit be given in each State to the public Acts, Records, and judicial proceedings of every other State." The laws in question (App.

1a & 4a) apply to the public generally with respect that "any and all property which said corporation (s) *** (have) heretofore purchased or otherwise acquired and any legacy, devise, grant, gift, bequest, transfer or subscription, heretofore or hereafter made or given to said corporation(s) in or by any of the names by which it has been known previous to the passage of this act shall be vested in and owned by the said corporation under the name provided * * * as amended by this act." Such laws, regularly enacted and published by the legislature of The State of New York, referred to all citizens generally as to their true purpose in changing the names and **providing that any citizen who may have theretofore made a gift or who might thereafter make a gift to Petitioners by use of a former name would have such gift pass to Petitioners under their new name.** In this respect the laws did not refer to a special or specific class of persons but referred to the citizenry generally as possible givers to Petitioners' charitable corporations. Petitioners respectfully submit that the trial court therefore properly took judicial notice of these Petitioners' changed names and of such laws changing the names and providing continuity of title to the gifts as public laws and properly found that the beneficiaries named in testators' Wills were the same parties as these Petitioners (App. 10a & 20a).

STATEMENT

The judgment sought to be reviewed is that of The Supreme Court of The State of Kansas overruling the judgment of the District Court of Sedgwick County (Kansas) and ordering the District Court to dismiss Petitioners' appeal from the Probate Court of Sedgwick County of the District Court.

The first case above captioned, herein called the Nellie M. Cramer case, involved the administration of her estate

under a Will naming her brother, Fred S. Cramer, as sole legatee and devisee, and naming these Petitioners as contingent beneficiaries. The second case above captioned, herein called the Fred S. Cramer case, involved the administration of the estate of Fred S. Cramer, who survived Nellie M. Cramer, and who died during the pendency of the administration of her estate. The Will of Fred S. Cramer named Petitioners as the sole and only legatees and devisees of his estate. The names used in both Wills were:

> "the Division of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church." (App. 8a & 18a)

The Nellie M. Cramer Will was executed on March 10, 1953. The Fred S. Cramer Will was executed on March 11, 1953. As of the date of execution of both Wills "the Division of Foreign Missions" etc. was legally named:

> "Division of Foreign Missions and Church Extension of the Board of Missions and Church Extension of the Methodist Church" (App. 4a),

and "the Division of Home Missions" etc. was legally named:

> "Division of Home Missions and Church Extension of the Board of Missions and Church Extension of the Methodist Church" (App. 1a),

obviously indicating Petitioners' names by appending that portion of the names of each, common to each name, to the first portion of each name not common to each name.

A few days later, i.e., on March 25, 1953 and March 17, 1953, respectively, Petitioners' names were shortened and changed, with respect to the "Division of Foreign Missions"

to: "Divisions of World Missions of the Board of Missions of the Methodist Church", and with respect to the "Division of Home Missions" to: "Division of National Missions of the Board of Missions of the Methodist Church", which names are presently the correct corporate names of Petitioners. (App. 4a & 1a)

Petitioners appealed the final Orders in both cases as entered by the Probate Court of Sedgwick County (Kansas) to State District Court in an effort to reduce what Petitioners regarded as excessive Administrator's and Attorney's fees, which fees therby reduced the amounts passing solely to Petitioners to a fraction of the total fees and expenses in the cases.

The State District Court found, as a matter of fact, that Petitioners, as their names are last above set out, were the sole legatees and devisees under the Wills, and, by other findings of fact, reduced the allowance of Administrator's and Attorney's fees substantially.

Respondent appealed to The Supreme Court of The State of Kansas alleging among other things that Petitioners were strangers to the action by virtue of the change of names and that the District Court improperly found the entities described in the Wills and these Petitioners to be one and the same. Respondent's contentions were sustained in the State Supreme Court which held that the District Court should not have judicially noticed such identity nor the laws of the State of New York as public laws, holding that they were private laws. The State Supreme Court ordered Petitioners' appeal from Probate Court to District Court dismissed.

REASONS FOR GRANTING THE WRIT

The Decision of The Supreme Court of The State of Kansas in a Matter of Great and Far Reaching Importance Conflicts in Principle with the Decisions of this Court so that Review by this Court is Called For.

The decision below involves a simple but fundamental issue of law. That issue is the distinction between public and private acts. This Court has previously commented on this distinction:

> "the distinction between public and private acts has become very artificial and shadowy since legislative bodies have adopted the principle of publishing in printed form all statutes which they pass." **Case v. Kelly**, 133 U.S. 21

The instant case affected the public at large in that it provided for the passage of title to gifts, past, present and future, to the corporation in its new name. In this respect all members of the public were affected since any member of the public could be a future contributor. In this connection this Court has stated:

> "Enactments of a general character, which affect the community at large, are generally regarded as public acts. **Unity v. Burrage**, 103 U.S. 447; **Ketchum v. St. Louis**, 101 U.S. 306.

Even though the laws of the State of New York, in question, concerned the change of name of a charitable corporation, that portion of the laws providing for the passage of title to gifts, the necessity for which was adequately brought out by the provisions of the Will's in these cases, certainly affected the public generally. An act, though relating to a private corporation may be public in character. **Gardner v. The Collector**, (Gardner v. Barney), 6 Wall (U.S.) 384, holding that a state

act incorporating a bank is a public law, where the act makes it a felony to counterfeit the notes of the bank.

A private act has been defined thus:

> "Special or private acts are rather exceptions than rules, being those which operate only upon particular persons and private concerns, such as the Romans entitled **senatus decreta**, in contradistinction to the **senatus consulta**, which regarded the whole community, and of these (which are not promulgated with the same notoriety as the former) the judges are not bound to take notice, unless they are formally shown and pleaded."
> 1 **Blackstone's Commentaries** 86.

In making this comment Blackstone was comparing a statute preventing spiritual persons from making leases longer than twenty-one years, or their lives, observing that such an act (13 Eliz., c. 10) was "a public act, being a rule prescribed to the whole body of spiritual persons in the nation".

Although it is unthinkable that the law may possibly be so brittle as to ignore the obvious identity of the Petitioners' charitable corporations in the Wills, the correction of such an injustice, by itself, would probably not warrant the review of this Court in its historic function on review by Writ of Certiorari. Of utmost importance, however, is the question of interpreting the Constitution of The United States with respect to Article IV requiring that "full faith and credit be given in each State to the public Acts * * * of every other state." In the instant case justice has been denied by failure to permit judicial notice of what are by necessity, purpose and design essentially public acts of another state. The distinction is an archaic one, born at a time in the law when virtually all private matters were subjected to special legislative attention,

before the advent of legislative regulatory enactments and before the widespread publication of all acts of legislatures, whether public or private.

CONCLUSION

This case is one of outstanding importance. The decision in the Court below has denied full faith and credit to the statutes of The State of New York, and completely ignores the intent of the New York Legislature to which the instant case is precisely applicable. For the foregoing reasons a Writ of Certiorai should issue to The Supreme Court of The State of Kansas to review its decision.

Very respectfully submitted,

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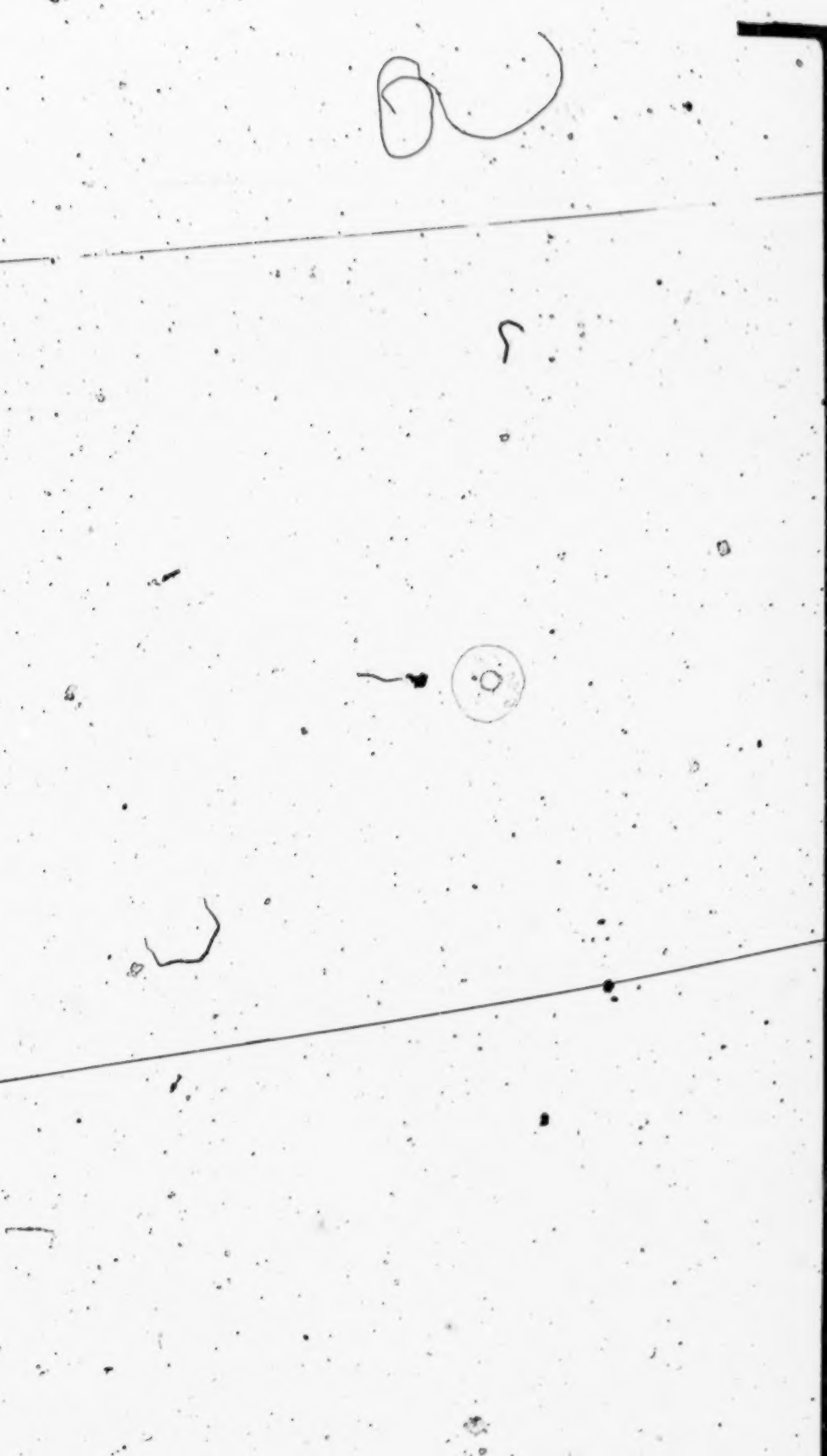
APPENDIX



APPENDIX

Laws of The State of New York — Chapter 111

DIVISION OF NATIONAL MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH

AN ACT to amend chapter ninety-eight of the laws of nineteen hundred forty-two entitled "An act to facilitate the unification and integration of the missionary organizations and societies of The Methodist Church and for that purpose to incorporate Division of Home Missions and Church Extension of the Board of Missions and Church Extension of The Methodist Church," in relation to changing the corporate name of "Division of Home Missions and Church Extension of the Board of Missions and Church Extension of The Methodist Church" to "Division of National Missions of the Board of Missions of The Methodist Church," and continuing such corporation in all of its privileges and powers.

Became a law March 17, 1953, with the approval of the Governor.

Section 1. Chapter ninety-eight of the laws of nineteen hundred forty-two, entitled "An Act to facilitate the unification and integration of the missionary organizations and societies of The Methodist Church and for that purpose to incorporate Division of Home Missions and Church Extension of the Board of Missions and Church Extension of The Methodist Church," is hereby amended to read as follows:

Sec. 1. All persons associated, or who may become associated, together in a body corporate under the name and style of "Division of Home Missions and Church Extension of the Board of Missions and Church Extension of The Methodist Church," are hereby continued as a body corporate by the name of "Division of National Missions of the Board of Missions of The Methodist Church." Any and all powers which said corporation has heretofore possessed and any and all prop-

erty which said corporation may have heretofore purchased or otherwise acquired and any legacy, devise, grant, gift, bequest, transfer or subscription, heretofore or hereafter made or given to said corporation in or by any of the names by which it has been known previous to the passage of this act shall be vested in and owned by the said corporation under the name provided *in this section as amended by this act.*

Sec. 2. The objects of said corporation are religious, philanthropic and educational, designed to diffuse more generally the blessings of Christianity and education and to promote and support Christian missions, missionary schools, church extension work and all phases of religious, missionary, church and church extension activity in all parts of the United States and its territories and also in such other places under the jurisdiction of the United States or on the continent of North America as may be committed to its care by or under the authority of the General Conference of The Methodist Church; and it shall have general supervision and administration of the work of home missions and church extension of The Methodist Church and general promotion and direction of movements relative to the spiritual meaning and work of Methodism; it may encourage and assist in the building of churches, parsonages and other mission buildings where assistance is most needed, giving attention to church architecture; and it shall administer all donation aid, load funds and endowments committed to it. care.

It may conduct and carry on its work directly as well as through corporate or other agencies of The Methodist Church now existing or hereafter established, including all agencies and corporations of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, which are now united in The Methodist Church and through such denominational, interdenominational, or other agencies as it may determine.

Said corporation shall be under the direction and control of the General Conference of The Methodist Church.

Sec. 3. The management and disposition of the affairs and property of said corporation shall be vested in its members

who shall collectively constitute its Board of Managers. The Board of Managers may delegate its power and authority to an executive committee. The number of its members, qualifications for membership, method of choosing members, number and qualifications of members to serve on the executive committee and the method of choosing such committee shall be as heretofore, or as from time to time hereafter prescribed by the General Conference of The Methodist Church. The managers and executive committee appointed as prescribed by said General Conference at its last previous session shall be entitled to act as such from and after the time this act shall take effect, until successors, chosen as prescribed by the General Conference, shall assume their duties.

Sec. 4. Said corporation shall have perpetual succession, may adopt a common seal and alter the same at pleasure, may sue and be sued, may acquire property for corporate purposes by grant, gift, purchase, devise or bequest, and hold or dispose of the same subject to such limitations as may be prescribed by law, may sell, transfer, lease, mortgage or otherwise dispose of such property, whether held in trust or otherwise, without obtaining leave of any court, may borrow money and secure the same by mortgage or otherwise, shall be competent to act as trustee in respect to any gift, devise or bequest pertaining to the objects of the corporation, may accept contributions to its funds subject to annuity, and may make such by-laws and rules for the management of its affairs as may be consistent with law and with its constitution which shall be adopted and may be altered from time to time by or under the authority of the General Conference of The Methodist Church, and shall have all the general powers and privileges of a corporation organized under the corporation laws of the state of New York.

Sec. 5. Said corporation is organized exclusively for charitable, religious and educational purposes and not for profit. None of its members, executive committee or officers shall have any share or interest in its assests or earnings; no shares of stock shall be issued and no part of its net earnings shall inure to the benefit of any private individual and no part of its

activities shall be attempting in any way to influence legislation.

Sec. 6. In the judgment of the legislature the objects of this corporation cannot be attained under general laws, and the provisions of this act shall be liberally construed with a view to effecting its objects and promoting its purposes.

Sec. 2. This act shall take effect immediately.

Laws of The State of New York — Chapter 229

DIVISION OF WORLD MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH

AN ACT to amend chapter five hundred sixteen of the laws of nineteen hundred forty-one, entitled "An act to consolidate and amend the several acts relating to the charter of 'Board of Foreign Missions of the Methodist Episcopal Church,'" in relation to changing the corporate name of "Division of Foreign Missions of the Board of Missions and Church Extension of The Methodist Church" to "Division of World Missions of the Board of Missions of The Methodist Church," and continuing such corporation in all of its privileges and powers.

Became a law March 25, 1953, with the approval of the Governor.

Section 1. Chapter five hundred sixteen of the laws of nineteen hundred forty-one, entitled "An Act to consolidate and amend the several acts relating to the charter of 'Board of Foreign Missions of the Methodist Episcopal Church,'" is hereby amended to read as follows:

Sec. 1. Chapter one hundred and seventy-five of the laws of eighteen hundred seventy-three, entitled "An act to amend the charter of the Missionary Society of the Methodist Episcopal Church," and chapters one hundred and sixty-nine of the laws of nineteen hundred six and one hundred and sixty of the laws of nineteen hundred twenty, amendatory thereof, as

amended and consolidated into one act; and the several provisions thereof, as thus amended and consolidated, are comprised in the following sections:

Sec. 2. All persons associated, or who may become associated, together in constituting a body corporate under the name and style of "Division of Foreign Missions of the Board of Missions and Church Extension of The Methodist Church," and declared to have been such body corporate since the passage of the act entitled "An Act to incorporate the Missionary Society of the Methodist Episcopal Church," passed April ninth, eighteen hundred thirty-nine, are hereby continued as a body corporate by the name of "Division of World Missions of the Board of Missions of The Methodist Church." Any and all powers which said corporation has heretofore possessed and **any and all property which said corporation may have heretofore purchased or otherwise acquired and any legacy, devise, grant, gift, bequest, transfer or subscription, heretofore or hereafter made or given to said corporation in or by any of the names by which it has been known previous to the passage of this act shall be vested in and owned by the said corporation under the name provided in this section** as amended by this act.

Sec. 3. The objects of said corporation are religious, philanthropic and educational, designed to diffuse more generally the blessings of Christianity and education and to promote and support Christian missions, missionary schools and all phases of religious activity in foreign countries and also in such other places as may be committed to the care of said corporation by or under the authority of the General Conference of The Methodist Church.

It may conduct and carry on its work directly as well as through corporate or other agencies of The Methodist Church now existing or hereafter established, including all agencies and corporations of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, which are now united in The Methodist Church, and

through such denominational, interdenominational, or other agencies as it may determine.

Said corporation shall be under the direction and control of the General Conference of The Methodist Church.

Sec. 4. The management and disposition of the affairs and property of said corporation shall be vested in its members who shall collectively constitute its Board of Managers. The Board of Managers may delegate its power and authority to an executive committee. The number of its members, qualifications for membership, method of choosing members, number and qualifications of members to serve on the executive committee and the method of choosing such committee shall be as heretofore, or as from time to time hereafter, prescribed by the General Conference of The Methodist Church. The managers and executive committee appointed as prescribed by said General Conference at its last session shall be entitled to act as such from and after the passage of this act, until successors, chosen as prescribed by the General Conference, shall assume their duties.

Sec. 5. Said corporation shall have perpetual succession, may adopt a common seal and alter the same at pleasure, may sue and be sued, may acquire property for corporate purposes by grant, gift, purchase, devise or bequest, and hold or dispose of the same subject to such limitations as may be prescribed by law, may sell, transfer, lease, mortgage or otherwise dispose of such property, whether held in trust or otherwise, without obtaining leave of any court, may borrow money and secure the same by mortgage or otherwise, shall be competent to act as trustee in respect to any gift, devise or bequest pertaining to the objects of the corporation, may accept contributions to its funds subject to annuity, and may make such by-laws and rules for the management of its affairs as may be consistent with law and with its constitution which shall be adopted and may be altered from time to time by or under the authority of the General Conference of The Methodist Church, and shall have all the general powers and privileges of a corporation organized under the corporation laws of the state of New York.

Sec. 6. **Said corporation is organized exclusively for charitable, religious and educational purposes and not for profit.** None of its members, executive committee or officers shall have any share or interest in its assets or earnings; no shares of stock shall be issued and no part of its net earnings shall inure to the benefit of any private individual and no part of its activities shall be attempting in any way to influence legislation.

Sec. 2. This act shall take effect immediately.

Opinion of The Supreme Court of The State of Kansas

In The Supreme Court of The State of Kansas

No. 41,119

IN RE ESTATE OF NELLIE M. CRAMER, DECEASED. (Otto J. Koerner, Administrator **De Bonis Non Cum Testamento Annexo** of the Estate of Nellie M. Cramer, Deceased, **Appellant,** v. The Division of National Missions of the Board of Missions of The Methodist Church and the Division of World Missions of the Board of Missions of The Methodist Church, **Appellees.**)

Appeal from Sedgwick district court, division No. 1; WILLIAM C. KANDT, judge. Opinion filed December 6, 1958. Reversed with directions.

ROBB, J.: In a proceeding commenced to probate the will of a testatrix the probate court, in its journal entry of final settlement, allowed fees to the administrator for his services and for the services of his attorney. Appeal was taken therefrom to the district court by the present appellees and that court modified and substantially reduced such fees, from which order the administrator perfected this appeal.

A question vital herein relates to the jurisdiction of the trial court on the appeal from the probate court and in determining that question we must keep in mind the following salient portions of the record.

The will of Nellie Cramer dated March 10, 1953, contains two paragraphs pertinent to the questions before us. They read:

"SECOND: I hereby give, devise and bequeath all the rest and residue of my property of every kind and character, and wherever situated, unto my brother, Fred S. Cramer, absolutely and in fee simple.

"THIRD. In the event of the death of my brother, Fred S. Cramer, prior to my death, or in the event of the death of my said brother and myself at or about the same time as a result of the same accident or casualty, then and in any of said events, I hereby give, bequeath and devise all of my property, both real and personal to the Division of Foreign Missions and Division of Home Missions and Church Extension of The Methodist Church."

On May 13, 1954, Nellie died leaving an estate consisting of some presonal property and a one half interest in six parcels of real property in the city of Wichita. At the time of Nellie's death, her brother Fred S. Cramer, in his own right owned the other one half interest in those same parcels.

Fred survived Nellie and on November 24, 1954, he was appointed and qualified as executor of her estate. Morris H. Cundiff was appointed and acted as attorney for Nellie's estate and for the executor thereof. In February, 1955, Otto J. Koerner, appellant, was appointed guardian for the estate of Fred S. Cramer, then an incompetent person, and in his search to determine the ownership of the properties in Fred's estate, he learned of Nellie's one-half interest in the real property in which Fred owned the other one-half interest. He also learned that Morris Cundiff was attorney for Fred as executor of Nellie's estate. Koerner contacted Cundiff and Fred was thereafter removed as executor of Nellie's estate. (It should be noted that while Koerner and Cundiff are both attorneys at law they are not associated in the practice.) On March 22, 1955, Koerner was appointed and qualified as administrator **de bonis non cum testamento annexo** with a bond of $10,000.

The Division of Foreign Missions and Division of Home Missions and Church Extension of The Methodist Church, as specifically named in the will, notified Koerner by letter on January 25, 1956, that service of all proceedings requiring notice was to be made on their counsel. No showing of any

change in identification of the religious corporations was made by pleading or proof.

In order to pay some fees, bills, and expenses in the administration of Nellie's estate, the probate court ordered two two of the properties sold, which left four remaining parcels of real property. On June 10, 1955, Fred died and Koerner was appointed administrator **cum testamento annexo** of his estate.

On February 25, 1957, in its order for partial distribution, the probate court directed Koerner, as administrator of Nellie's estate, to deliver the four remaining parcels of real property to Koerner, as administrator of Fred's estate. Again the Division of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church as described in Nellie's will, waived service of notice, entered their appearances, and approved the order for partial distribution.

On June 17, 1957, the probate court entered its journal entry of final settlement in Nellie's estate and therein made the following pertinent findings:

> "The court further finds that the names and residences of the heirs, devisees and legatees who are entitled to the estate under the said will are as follows:
>
> "Fred S. Cramer, her brother, now deceased, but living at the time of the death of this decedent, and now vested in the estate of Fred S. Cramer, deceased, being administered by Otto J. Koerner, administrator cum testamento annexo.
>
> "The court further finds that under the will of Nellie M. Cramer, deceased, Fred S. Cramer is the devisee and legatee of all the residue of the estate, real and personal."

The probate court ordered the four remaining parcels of realty and all other property transferred to Koerner as administrator of Fred's estate. In addition to allowance of appraisers' fees, publication and court costs, Koerner, as administrator of Nellie's estate, was allowed $1,500 as his fee together with a $1,500 fee for his attorney, Morris Cundiff. This

journal entry was approved by counsel for the Division of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church" which is the same identity that appeared in Nellie's will.

A notice of appeal from the allowance to the administrator of a fee of $4,500 and an attorney's fee of $1,500 by the probate court's journal entry was filed by "The Division of National Missions of the Board of Missions of the Methodist Church," and "The Division of World Missions of the Board of Misions of the Methodist Church," which is the first appearance of these identities with no showing in the record as to who these parties were.

By stipulation the record of the probate court proceedings in Nellie's estate was introduced into the record of the trial on appeal in the district court and the evidence of Koerner, together with that of several other witnesses, regarding the services of Koerner and his attorney and the reasonableness of fees for those services, was introduced. At the conclusion of the trial in the district court, suggested findings of fact and conclusions of law were submitted by each party and the trial court entered its journal entry containing these pertinent findings of fact:

> "4. That the Division of Foreign Missions referred to in paragraph numbered Third in the last will and testament of Nellie M. Cramer, is one and the same as 'Board of Foreign Missions of the Methodist Church, whose name has now been changed to Division of World Missions of the Board of Missions of the Methodist Church', and that Division of Home Missions and Church Extension of the Methodist Church is one and the same as 'Division of Home Missions and Church Extension of the Methodist Church, whose name is now changed to Division of National Missions of the Board of Missions of the Methodist Church.
>
> "12. That the residuary legatees and devisees, Division of World Missions of the Board of Missions of the

Methodist Church and Division of National Missions of the Board of Missions of the Methodist Church filed a petition on the 13th day of February, 1957, in the Probate Court of Sedgwick County, Kansas, requested the administrator d.b.n.c.t.a. to show cause why said estate should not be closed. That said petition was set to be heard on the 25th day of February, 1957.

"13. That order of partial distribution, dated the 25th day of February, 1957, was entered in said estate, assigning all of the real estate which remained in the estate as of said date to Division of National Missions of the Board of Missions of the Methodist Church and Division of World Missions of the Board of Missions of the Methodist Church.

"16. That an appeal from the award of administrator fee and attorney fee of the probate court of Sedgwick County, Kansas, entered on th 27th day of June, 1957, was perfected to the District Court of Sedgwick County, Kansas.

"17. That the just and reasonable value of the services of the administrator d.b.n.c.t.a. of the estate of Nellie M. Cramer, deceased, is an amount in the sum of $950.00.

"18. That a just and reasonable fee for the services of Morris M. Cundiff, as attorney for Otto J. Koerner, administrator, d.b.n.c.t.a. is an amount in the sum of $950.00, and that said administrator should be allowed said amount as and for attorney fees for said attorney."

Conclusion of law No. 1 reads:

"The Court has jurisdiction over the parties and the subject matter in this cause of action."

Koerner filed motions for new trial and to strike the trial court's findings of fact and conclusions of law, which were overruled. Koerner then perfected his timely appeal from the trial court's findings and conclusions, orders, decisions, and

judgments and from the orders overruling motions to strike and for new trial, and, in addition, the record before us indicates that Koerner certified that,

> ". . . there is no evidence offered or admitted in the Probate Court, or in the District Court in the trial of the appeal from the Probate Court, that the appellants (appellees herein), namely; **The Division of National Missions of the Board of Missions of the Methodist Church** and **The Division of World Missions of the Board of Missions of the Methodist Church**, were or are one and the same, or identical with, **Division of Foreign Missions** and **Division of Home Missions** and **Church Extension of the Methodist Church** as named in the Last Will and Testament of Nellie M. Cramer, deceased, or in the Last Will and Testament of Fred S. Cramer, deceased, as determined by the Probate Court to be the legatees and devisees of Fred S. Cramer, deceased, under the provisions of his Last Will and Testament."

The foregoing certification was not denied, modified, or qualified in any manner by appellees herein. (We are not determining in this opinion any part of the appeal in case No. 41,120, **In re Estate of Fred S. Cramer**, deceased, 183 Kan. 816, 332 P. 2d 560, this day decided.)

On appeal in this court appellees for the first time attach four private statutes of the state of New York which disclose the change of the corporate names and identities of the Division of Foreign Missions and Divisions of Home Missions and Church Extension of The Methodist Church, as described in Nellie's will, to that of the corporate names and identities as they appeared in the notice of appeal from the probate court to the district court and as they appeared in the appeal to this court.

Our first concern is whether the record shows that the parties seeking to appeal from the probate court's order of final settlement in Nellie's estate were proper parties for that purpose. Appellees contend that they were aggrieved persons and as such were proper parties while Koerner claims that

nothing was pleaded or proved to establish their identities so that they could come within the category of aggrieved persons.

The applicable provision of our probate code (G. S. 1949, 59-2404), in part reads:

> "Such appeal may be taken by any person aggrieved within thirty days after the making of such order, judgment, decree, or decision: **Provided**, . . . The right of appeal shall not be denied nor abridged for failure of the party appealing to present his defenses in the probate court or to appear therein."

Koerner cites **In re Estate of Johnson**, 164 Kan. 45, 187 P. 2d 376, where Alice Knight Kirkpatrick, daughter by a former marriage of Sarah A. Johnson, the widow of a deceased testator, who named his widow as a beneficiary in his will, attempted an appeal from the probate court to the district court from the order of final settlement of the testator's estate. At the time of the attempted appeal Sarah A. Johnson had died, but her will making Alice a beneficiary therein had not been offered for probate nor had a personal representative been appointed. Since Alice was not entitled to object to the order of final settlement of testator's estate in the probate court and therefore she was not entitled to appeal from such order to the district court, it can readily be seen Alice was not a proper party to take the appeal as an aggrieved person, or otherwise, and rules of law applicable there are not applicable here.

On the other hand, appellees call our attention to **In re Estate of James**, 168 Kan. 165, 211 P. 2d 123, where, upon the death of the executor named in testator's will, a dispute arose between heirs at law or next of kin of the testator and the legatees under his will over the appointment of a successor administrator de bonis non cum testamento annexo. As was substantially held in that case, such parties were interested and aggrieved persons. Another case is **In re Estate of Demoret**, 169 Kan. 171, 218 P. 2d 225. There an appeal by the executor from the probate court to the district was dismissed on jurisdictional grounds because proper notice required by

G. S. 1949, 59-2405 had not been given. Part of the testatrix's property sought to be inventoried, as here, was determined by the probate court to be trust property. It would be impossible to say that the executor under those circumstances was not an aggrieved person. Appellees also cite **In re Estate of Case,** 180 Kan. 53, 299 P. 2d 589, wherein the state of Kansas petitioned for administration of the estate of a deceased intestate alleging that such intestate bachelor left an estate but his heirs were unknown, or that he had no known heirs, and that the state of Kansas was a person aggrieved when a decision adverse to its interests was rendered. That case, while interesting, is neither analogous to nor conclusive of our case. We have no trouble in agreeing with the proposition that in these three instances the appealing parties were "persons aggrieved."

Koerner raises a very germane element when he argues that the appellees here neither pleaded nor proved their identities (**Memorial Home v. Collins Estate,** 97 Kan. 87, 88, 154 Pac. 274) so as to establish themselves as "persons aggrieved" and to determine that feature we must turn to our controlling statutes and decisions. G. S. 1949, 60-2878 provides:

> "Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States."

G. S. 1949, 60-2880 provides:

> "The determination of such laws shall be made by the court . . . and shall be reviewable."

G. S. 1949, 60-744 provides:

> "In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its approval, and the court shall thereupon take judicial notice thereof."

In **A.T. & Santa Fe Rld. Co. v. Blackshire,** 10 Kan. 477, the court held:

"Courts do not take judicial notice of a private act of legislature. It must be proved or pleaded, or no attention will be paid to its existence." (Syl. Par. 2.)

In the same opinion the court stated:

"It is sufficient . . . to say that the act incorporating the A.T. & S.F. Rld. Co. is a private act, and, as it was neither pleaded nor proved the court was under no obligation to notice its existence, or refer to its provisions. Courts take judicial notice of the public statutes of their own state, and these need to be neither pleaded or proved. But the rule is otherwise with the private laws. They are matters of proof. In pleading them, or a right derived from them, it is sufficient under the code to refer to them by their title and the dates of their approval, and thereupon the courts take judicial notice of them: Code Sec. 124. Nothing of this kind was done in this case." (p. 487.)

The above case is still the law in respect to our courts taking judicial notice of the private statutes of Kansas and it would be unwise and injudicious to say that courts of Kansas must take judicial notice of private acts of other jurisdictions, irrespective of whether they are pleaded or proved by reference to such statutes by title and the dates of their approval, and in the same breath say that Kansas courts cannot consider such private statutes of Kansas unless they are so pleaded or proved. This would lead to unlimited confusion, and indefiniteness in titles of real property in the state of Kansas.

In view of Koerner's certificate as to appellees' failure to offer proof of their identities, previously set out herein, they could not be **persons aggrieved** whereby they could maintain their attempted appeal from the probate court to the district court. Neither the record in the probate court nor the record in the district court make it possible to determine who the appellees were or what their position was at any time during the proceedings in those courts. As a result, and because of their failure in the district court to sustain the required burden to establish affirmatively by competent proof their iden-

tities and interests in the estate so as to constitute them persons aggrieved within the meaning of G. S. 1949, 59-2404, and where they rely upon private statutes of New York which were neither pleaded nor proved and there is nothing in the record to show their identities or interests, they were not persons aggrieved and were not entitled to maintain the appeal. The district court obtained no jurisdiction of the purported appeal and it should have been dismissed.

Appellees have not helped themselves by presenting the private acts of the state of New York for the first time in the appeal to this court because we do not consider matters which have not previously been presented to the trial court. (**Emerson v. Peters**, 110 Kan. 87, 202 Pac. 601.)

The judgment of the trial court is reversed with directions to dismiss the appeal from the probate court.

In The Supreme Court of The State of Kansas

No. 41,120

(In re Estate of Fred S. Cramer, Deceased.) OTTO J. KOERNER, ADMINISTRATOR CUM TESTAMENTO ANNEXO OF THE ESTATE OF FRED S. CRAMER, Deceased, **Appelant,**

v.

THE DIVISION OF NATIONAL MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH AND THE DIVISION OF WORLD MISSIONS OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH, **Appellees.**

Appeal from Sedgwick district court, division No. 1; Wm. C. KANDT, judge. Opinion filed December 6, 1958. Reversed with directions.

FATZER, J.: This was an appeal from the probate court to the district court from an order allowing administrator's fees and attorney fees upon the final settlement of a decedent's estate. No other orders of the final settlement were appealed. The controversy was between two organizations of the Methodist Church (appellants in the district court) and the administrator **de bonis non cum testamento annexo**, hereafter referred to as administrator. The organizations were not found to be the legatees and devisees of the decedent upon the final settlement, and, so far as the pleadings or proof was concerned in the district court, were strangers to the decedent's estate. A jury having been waived, trial was to the court which made findings of fact, conclusions of law, and entered judgment for administrator's fees and attorney fees in an amount less than that allowed by the probate court.

At the outset we are confronted with a contention which must be disposed of before the merits of the appeal may be considered. The administrator insists that the district court did not have jurisdiction to entertain the appeal from the probate court, and that it should be directed to dismiss the appeal upon the ground that the appellees in this court neither pleaded nor proved they had an interest in the controversy, hence they could not be a "person aggrieved" within the meaning of G. S. 1949, 59-2404, and had no authority to appeal. If the district court had no jurisdiction of the appeal, its findings of fact, conclusions of law, and entry of judgment are of no force and effect (**In re Estate of Demoret**, 169 Kan. 171, 218 P. 2d 225).

Pertinent facts are quoted and summarized: Fred S. Cramer and Nellie M. Cramer were brother and sister. Fred and Nellie each owned an undivided one-half interest in six separate tracts of real estate in Wichita. Nellie died on May 13, 1954, predeceasing Fred, leaving a will in which Fred was named as devisee and legatee. The third paragraph of her will provided that in the event Fred predeceased Nellie, or in the event Nellie and Fred died at or about the same time as a result of the same accident or casualty, the **Division of Foreign**

Missions and Division of Home Missions and Church Extension of the Methodist Church would be her devisees and legatees. Nellie's will was admitted to probate on November 22, 1954, and Fred was appointed executor. On February 17, 1955, Fred was adjudged incompetent by the probate court of Sedgwick County and Otto J. Koerner, appellant herein, was appointed guardian of his person and estate. On March 22, 1955, Fred was removed as executor and appellant was appointed administrator of Nellie's estate. The appellant served in the capacity of administrator of Nellie's estate and guardian of Fred's person and estate until Fred's death on June 10, 1955. For the companion appeal concerning Nellie's estate see **In re Estate of Cramer** (No. 41,119); 183 Kan. 808, 332 P. 2d, 554, this day decided.

Fred died testate leaving a will similar to that of Nellie, the pertinent portions of which read:

> "SECOND. I hereby give, devise and bequeath all the rest and residue of my property of every kind and character, and wherever situated, unto my sister, Nellie M. Cramer, absolutely and in fee simple.
>
> "THIRD. In the event of the death of my sister, Nellie M. Cramer, prior to my death, or in the event of the death of my said sister and myself at or about the same time as a result of the same accident or casualty, then and in any of said events, I hereby give, bequeath devise all of property, both real and personal, to the **Divisions of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church.**"
>
> (Emphasis supplied.)

Fred's will was admitted to probate on June 18, 1955, and appellant was appointed administrator and continued the administration of both estates. Certain real estate was sold pursuant to the order of the probate court and one-half of the proceeds was credited to each estate.

On January 25, 1956, counsel for the appellees wrote the administrator as follows:

"This is to advise you that this firm represents The Division of Foreign Missions and The Division of Home Missions and Church Extension of The Methodist Church and directs that all proceedings requiring notice in the future be served upon our firm in behalf of the Division of Foreign Missions and The Division of Home Missions and Church Extension of The Methodist Church."

On February 25, 1957, the probate court entered orders of partial distribution in both estates. The administrator appeared in person and with his attorneys and the devisees and legatees under Fred's will appeared by W. Jay Esco, and no other appearances were made. With respect to Nellie's estate, the order of partial distribution transferred and assigned title to her undivided one-half interest in the real property to Fred's estate pursuant to the terms of her will, and in Fred's estate, the order transferred and assigned title to all of the real property to the Division of Foreign Missions and the Division of Home Missions and Church Extension of the Methodist Church the devisees and legatees named in his will.

On June 17, 1957, final settlement was had in both Nellie's and Fred's estates. The administrator appeared in person and with his attorneys, and W. Jay Esco appeared for the devisees and legatees, and there were no other appearances. The journal entry of final settlement reads, in part:

"The court further finds that under the will of Fred S. Cramer, deceased, the Division of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church is the devisee and legatee of all the residue of the estate, real and personal, Nellie M. Cramer having pre-deceased this testator, the date of her death being May 1[illegible] 1954."

The prayer of the petition for final settlement was granted, final settlement was ordered made and title to the real and personal property was assigned to the devisees and legatees named in the will; fees were allowed and ordered paid to the administrator and his attorneys, and the administrator was ordered discharged upon filing of receipts of payments

and distributions pursuant to the journal entry of final settlement. The journal entry was signed by the probate judge, approved by the attorneys for the administrator and W. Jay Esco as attorney for the **Division of Foreign Missions** and **Division of Home Mission and Church Extension of the Methodist Church.**

On June 23, 1957, the appellees in this court, the **Division of National Missions of the Board of Missions of the Methodist Church,** and **the Division of World Missions of the Board of Missions of the Methodist Church** by and through their attorney, W. Jay Esco, prepared, served and filed a notice of appeal in both Nellie's and Fred estates,

> " . . . from the Order of said Court in allowance of administrator's fees and attorneys' fees of the Probate Court of Sedgwick County, Kansas, rendered in the above entitled matter on the 27th day of June, 1957, in which said Court allowed the administrator a fee of $4,500.00 and attorney fees for the administrator's attorneys in the sum of $2,500.00."

A jury being waived, trial **de novo** was by the court which, among others, made the following findings of fact and conclusions of law:

FINDINGS OF FACT

"3. That under paragraph three of testator's Will, **Division of National Missions of the Board of Missions of the Methodist Church** and **Division of World Missions of the Board of Missions of the Methodist Church** were the sole legatees and devisees of all property, both real and personal of the testator, Fred S. Cramer.

"9. That order of partial distribution, dated the 25th day of February, 1957, was entered in said estate, assigning all of the real estate which remained in the estate as of said date to **Division of National Missions of the Board of Missions of the Methodist Church** and **Division of World Missions of the Board of Missions of the Methodist Church.**

"11. That an appeal from the award of administrator fee and attorneys fees of the probate court of Sedgwick County, Kansas, entered on th 27th day of June, 1957, was perfected to the District Court of Sedgwick County, Kansas." (Emphasis supplied.)

CONCLUSIONS OF LAW.

"1. The Court has jurisdiction over the parties and the subject matter in this cause of action."

Thereafter the administrator moved to set aside findings of fact No. 3, 9 and 11 upon the ground that such findings were contrary to Fred's last will and testament and the order of final settlement from which no appeal was taken; that there was no evidence to support such findings, or that the parties attempting to appeal had any right or interest in Fred's estate, and were not the real parties in interest in the estate but were strangers to the proceeding and not a "person aggrieved." The motion to set aside the findings of fact and conclusions of law and for a new trial being overruled, the administrator appeals.

Did the district court have jurisdiction of the appeal from the probate court? We think it did not. Pursuant to G. S. 1949, 60-3826 and Rule No. 5 of this court, the administrator certified in his abstract that,

". . . there is no evidence offered or admitted in the Probate Court, or in the District Court in the trial of the appeal from the Probate Court, that the appellants (appellees herein), namely: **The Division of National Missions of the Board of Missions of the Methodist Church and The Division of World Missions of the Board of Missions of the Methodist Church**, were or are one and the same, or identical with, **Division of Foreign Missions and Division of Home Missions and Church Extension of the Methodist Church** as named in the Last Will and Testament of Fred S. Cramer, deceased, as determined by the Probate Court to be the legatees and devisees of Fred S. Cramer, deceased, under the provisions of his Last Will and Testament."

The appellees in this court do not deny the correctness of the certificate, but seek to justify their failure to present evidence in the courts below that they are identical to the devisees and legatees named in Fred's will, and are the successors in interest to those named organizations by including in their counter abstract exhibits "A", "B", "C" and "D" purporting to be copies of the laws of the state of New York, which they claim changed the names of **Division of Foreign Missions of the Board of Missions and Church Extension of the Methodist Church** to **Division of World Missions of the Board of Missions of the Methodist Church** (Ch. 516, L. of N. Y., approved April 17, 1941; Ch. 229, L. of N. Y., approved March 23, 1953) and **Division of Home Missions and Church Extension of the Board of Missions and Church Extension of the Methodist Church** to **Division of National Missions of the Board of Missions of the Methodist Church** (Ch. 98, L. of N. Y., approved March 12, 1942; Ch. 111, L. of N. Y., approved March 17, 1953), and ask that we take judicial notice of such laws pursuant to G. S. 1949, 60-2878. By this means they seek to establish identity of and successorship to the organizations named as devisees and legatees in the will.

It will be noted that the names by which the appellees in this court were known at the time Fred's will was executed were different than the names of the organizations designated as his devisees and legatees. Thus, we are confronted with three different sets of names; those designated in Fred's will, those appellees claim they were known by at the time the will was executed, and those which the appellees claim they are known by at the present time and under which they appealed to the district court.

A careful examination of the appellees' exhibits indicates they deal entirely with the change of names of the organizations referred to, the objects of the corporations, their purposes, organization and management, their right to sue and be sued, and other matters which are of a purely private nature. Assuming that the exhibits submitted are in fact copies of laws of the state of New York, it is clear they are not public laws but are what is known as "private" laws relating to mat-

ters which affect only the change of name, organization, powers and continuity of the appellees (**A.T. & Santa Fe Rld Co. v. Blackshire**, 10 Kan. 477; **Sarahass v. Armstrong**, 16 Kan. 192; **Chambers v. Atchison, Etc. Ry. Co.**, 32 Ariz. 102, 255 Pac. 1092; **Garner v. Teamsters Union**, 346 U.S. 485, 98 L. ed. 228, 74 S. Ct. 161; 82 C.J.S., Statutes, Sec. 167, Sec. 169, pp. 283, 285; 50 Am. Jur., Statues, Sec. 12, pp. 28, 29). The distinction between a public law and a private law is stated in Crawford, Statutory Construction (1940), Sec. 69, pp. 101, 102, as follows:

> "A public act is a universal rule that regards the whole community, or relates to the public at large . . . . The true test is whether it is concerned with the public rather than with a private interest. A private act, on the other hand, is one which operates only upon particular persons, or is concerned with the particular interest or benefit of certain individuals or classes of persons. Thus, while a public statute affects the public at large or within certain subdivisions, a private statute relates to or affects a particular person by name, or in such a manner that certain persons or classes of persons are interested in a manner peculiar to themselves and not in common with the entire community . . . ."

This court has previously had before it a law similar to those referred to in the exhibits, i.e., an act incorporating the Atchison, Topeka & Santa Fe Railway Company and held it to be a private law (**A.T. & Santa Fe Rld Co. v. Blackshire**, supra).

Although mindful that under our Judicial Notice of Foreign Laws Act (G. S. 1949, 60-2878 - 60-2880) we are required to take judicial notice of the **common law** and **statutes** of every state, territory and other jurisdiction of the United States (**Fischer v. Kipp**, 177 Kan. 196, 199, 277 P.2d 598) we do not think the mandate of the statute extends to private laws of those jurisdictions (**Sarahass v. Armstrong**, supra; **Miller v. Johnston**, 71 Ark. 171, 72 S. W. 371; **Chambers v. Atchison, Etc. Ry. Co.**, supra; **Leland v. Wilkinson**, 6 Pet. (U.S.) 317, 8 L. ed. 412).

The importance of whether a statute is public or private in character lies in the fact that courts, generally speaking, take judicial notice of the public laws of their own state, but not so with respect to private laws. Private laws are governed by a different rule, the basis of which is that they are no part of the public laws; they are matters of fact, and parties to an action who rely upon them, or rights derived from them, must plead or prove them in the same manner as other factual issues (20 Am. Jur., Evidence, Sec. 34, Sec. 35, pp. 59, 60; 31 C.J.S., Evidence, Sec. 22, p. 538; 82 C.J.S., Statutes, Sec. 445, p. 1022; see, generally, 23 C.J., Evidence, Sec. 1952, note 41, pp. 135, 136). This rule was recognized and applied by this court in its early history (**Walker v. Armstrong**, 2 Kan. 198, 221; **A.T. & Santa Fe Rld. Co. v. Blackshire**, supra; **Sarahass v. Armstrong**, supra). In **A.T. & Santa Fe Rld. Co. v. Blackshire**, it was held:

"Courts do not take judicial notice of a private act of the legislature. It must be proved or pleaded, or no attention will be paid to its existence." (Syl. 2.)

In the opinion Mr. Justice Brewer said:

" . . . . It is sufficient reply to this objection to say that the act incorporating the A.T. & S.F. Rld. Co. is a private act, and as it was neither pleaded nor proved the court was under no obligation to notice its existence, or refer to its provisions. Courts take judicial notice of the public statutes of their own state, and these need to be neither pleaded nor proved. **But the rule is otherwise with the private laws. They are matters of proof.** In pleading them, or a right derived from them, it is sufficient under the code to refer to them by their title and the dates of their approval, and thereupon the courts take judicial notice of them: Code, Sec. 124. Nothing of this kind was done in this case." (l.c. 487.) (Emphasis supplied.)

In **Sarahass v. Armstrong**, it was held:

"The courts do not take judicial notice of the general organization of the Methodist Episcopal Church, its ad-

ministration and control over local churches of that denomination, and their property." (Syl. 1.)

We direct attention to the provisions of G. S. 1949, 60-744, which read:

> "In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its approval, and the court shall thereupon take judicial notice thereof."

This statute was not repealed by implication by the enactment of our Judicial Notice of Foreign Laws Act (G. S. 1949, 60-2878, et seq.) and all of these statutes should be construed harmoniously so that each has a field of operation if that can reasonably be done. Obviously this can be done. The former relates to pleading private laws and rights derived therefrom, while the latter statues require courts to take judicial notice of only public laws. Following the general rule that a statute pertaining to a specific thing takes precedents over a general statute which might be construed to relate to it (**Wulf v. Fitzpatrick**, 124 Kan. 642, 261 Pac. 838; **Moody v. Edmondson**, 176 Kan. 116, 269 P. 2d 462; **City of Garden City v. Miller**, 181 Kan. 360, 368 311 P. 2d 306), we hold that the effect of these statutes when construed together is that judicial notice will be taken of foreign public laws, but that all private laws, whether of a sister state, territory or act of Congress, or of our legislature, must be pleaded or proved by the party asserting them, in the ordinary manner. This court cannot and will not, upon appellate review, make inquiry as to the facts of a private law, if evidence of their existence and validity is not found in the record and presented and discussed in the briefs on appeal.

While it is unnecessary for any persons aggrieved by an order, judgment, decree or decision of the probate court to present their defenses in that court or to appear therein (G. S. 1949, 59-2404), nonetheless, when they attempt to appeal to the district court they have the burden to affirmatively establish by competent evidence their right or interest in the estate, which was adversely affected. Where, as here, the parties attempt such an appeal and rely upon private laws of a sister

state, which were neither pleaded nor proved, to establish their right or interest in the estate and there is nothing in the record tending to show they are identical to or the successors of the organizations named as the devisees and legatees in the will, they are not a "person aggrieved" within the meaning of G. S. 1949, 59-2404, and have no authority to maintain the appeal. Consequently, under the record, the district court had no jurisdiction of the appeal and should have dismissed it upon the conclusion of the trial. It follows that its findings of fact and conclusions of law and entry of judgment are without force and effect and are a nullity (**In re Estate of Demoret,** supra).

The judgment of the district court is reversed with directions to set aside the judgment and the cause is remanded with instructions to the district court to dismiss the appeal and to certify that order to the probate court.

It is so ordered.